IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 16175 of 1999

Between:

Nookala Madhusudhan Reddy,

S/o.Venkatram Reddy,
R/o.Panthini Warangal.

..... PETITIONER

AND

The Kakatiya Urban Devlopment Authority,

Rep. by its Vice Chairman, Warangal.

.....RESPONDENT

* * * *

ORDER:

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This writ petition has been filed by Nookala Madhusudhan Reddy with a prayer to issue Writ of Mandamus declaring the action of the respondent in not implementing the undertaking in ROC.No.E2/842/97, dated 23.8.1997 as illegal, arbitrary and un-constitutional and direct the respondent to transfer the plots in Commercial and residential blocks in survey No.260 of Lasker Singaram Village of Hanamkonda Mandal, Warangal District in exchange to the plot No.35 at Waddepally cross Roads.

2. The petitioner is a member of Saibaba Co-operative Housing Society, Warangal. The society acquired land in survey Nos.569 and 570 of Waddepally village and developed the land as per sanctioned layout. Plot No.35 admeasuring 224 square yards, which is on the try junction, was allotted to the petitioner. In the road widening, the Kakatiya Urban Development Authority, Warangal, has taken possession of the said plot and laid the road. Since compensation has not been paid to the petitioner, he filed O.S.No.154 of 1997 for declaration of title and injunction. The said suit came to be dismissed as adjusted out side the Court. It is the contention of the petitioner that he withdrew the suit in view of the undertaking given by the respondent. Since the respondent has not kept up the undertaking, the petitioner approached this court by invoking the jurisdiction under Article 226 of the Constitution of India with the prayer stated supra.

3. A counter-affidavit has been filed by the respondent. The respondent does not dispute of taking possession of the land of the petitioner in road widening. It is stated in the counter that the petitioner has not submitted registered title deeds of the site and therefore further proceedings could not be taken up. I deem it appropriate to refer paras 5 and 6 of the counter-affidavit and it is thus:

> " The petitioner has just submitted society allotment letters instead of registered title deeds of the site and therefore legality of the plot is to be proved by the petitioner. The matter of acquisition and compensation need not arise, as the layout itself is unauthorized and 10% of open space is not left over as per G.O.Ms.No.62, M.A. dated 28.01.1970.
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> In this case the respondent has issued undertaking in Roc.No.E2/842/97, dated 23.08.1997 that alternative plots shall be provided, in view of the petitioners giving up their claim over the said site and accordingly issued several notices to the petitioner to furnish the regd. ownership titles. But the petitioner has not proved his title so far and not submitted the registered ownerships, documents, instead submitted only a letter of allotment copy of the society. Therefore, the matter with all details was referred to the Govt. (P.S. to Govt. M.A. & UDD) vide this office Lr.No.C3/27/93, dated 14.11.1998 for issue of necessary orders. The Govt. vide Lr.No.30928/H2/98, M.A., Dated 13.05.1999, 03.08.1999 observed that the claimants in the case are only having allotment letters in their favour, further presentation of title deeds at a later stage is not practicable since the possession of lands already rest with

KUDA. Hence, transfer has to be by the title deed holder only and requested to examine and furnish the details. While the matter is under examination, the respondent has received this interim stay order in this W.P. from High Court.

The alternative land as undertaken is located in Sy.No.260 of Lashkarsingaram (V) and is under development in sites and services scheme of the respondent authority. The undertaken plots are still under the possession of respondent and not put to public auction. The respondent is rightly unable to deliver the possession of alternative plots since the petitioner is not proving his title of ownership. Further the said petitioners land/plots in Sy.Nos.569, 570 of Waddepally (V) are declared as surplus land as per Special Officer, ULC. Lr.No.A3/329, 333, 334, 335/76, dated 18.08.97 and as per G.O.Ms.No.136, Revenue (UC.II) Dept. dated 28.01.1981 the declarants were entered into the agreement with Sai Baba Coop. Housing Society, Warangal and the Collector, Warangal has recommended the case to Govt. in view of pucca constructions, which have already come up and the issue is still pending with the government."

4. Heard learned counsel for the petitioner and learned Standing Counsel appearing for the respondent.

5. Learned counsel for the petitioner submits that the suit filed by the petitioner came to be withdrawn in view of the undertaking given by the respondent and therefore respondent cannot be permitted at a later stage to deny the claim of the petitioner for alternative site. He refers the undertaking given by the respondent on 23.08.1997. The under taking given by the respondent reads as follows:

" The Special Officer, KUDA, Warangal hereby agrees himself and the successors in his office to provide 3 (three) plots of 40 x 60 size (40 ft. facing 100 ft. road) is in the commercial block and 2 residential plots of 300 sq. yards each immediately following and separated by a road, out of survey No.260 situate at Lashkarsingaram village, Hanamkonda, free from encumbrances, with absolute rights to the plaintiffs in O.S.No.154 of 1997 on the file of the II Additional Subordinate Judge at Warangal in view of their giving up their suit claim in the said suit in favour of the KUDA with absolute rights with effect from 23.8.1997."

6. As noted supra no action has been taken by the respondent for allotment of alternative site to the petitioner. It is no more in dispute that the plot over which the

petitioner claims right has been taken possession by the respondent for widening the road. There is no justification on the part of the respondent in rejecting the claim of the petitioner for allotment of alternative site.

7. In the circumstances, I deem it appropriate to direct the respondent to consider the request of the petitioner for allotment of alternative site in pursuance of the undertaking given by the respondent on 23.8.1997 within four months from the date of receipt of a copy of this order.

8. Accordingly, the writ petition is disposed of. No costs.

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B.SESHASAYANA REDDY, J.

Date: 13th September 2005.

BSB